No. 82-1056

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MARSHALL FIELD & COMPANY,
Petitioner,

vs.

RAYMOND ALLEN, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

Statutes

Rules

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

The issue raised by petitioner Marshall Field & Company is whether respondents can be barred from exercising their statutory right to join a class action lawsuit under the Age Discrimination in Employment Act ("ADEA") on the ground that the named plaintiffs sent them a neutral, truthful, court-approved notice describing the litigation. Asserting that the Court of Appeals erred in allowing the plaintiffs to send this notice, petitioner wants every class member who later opted into the suit dismissed with prejudice.

Not a court in the country has hinted that petitioner's position has merit. The case on which petitioner relies rejects its position, and for good reason: it is unconstitutional. There is no basis for certiorari.

RESPONDENTS' STATEMENT OF THE CASE[1]

In October 1981, four named plaintiffs filed this class lawsuit under the Age Discrimination in Employment Act ("ADEA"). They alleged a campaign by petitioner to rid itself of older managerial employees. Under Section 16(b) of the Fair Labor Standards Act, 29 U. S. C. § 216(b), which governs ADEA cases, class members cannot participate in the suit unless they file written consents to do so.[2] Plaintiffs therefore took steps to notify class members of the existence of the suit, so that they could decide whether to exercise this statutory right.

On January 28, 1982, the district court granted plaintiffs' motion to send notice to class members. The notice (Respondents' Appendix, pp. 1a-3a) described the allegations of the lawsuit, set forth petitioner's denial of wrongdoing, and disclaimed any opinion by the court about the merits of the case or whether recipients should join it. The notice advised recipients

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[1] The list of respondents is contained in petitioner's appendix pp. 4-6. This brief is submitted on behalf of all respondents on that list except Caprini, Shaw, Chamberlain-Swenson, Marquetty, Cheslak, Darmicke, DeBouver, Johnson, Marasa, McKinsey, Murello, Savage, Warner, Baschnonga, and Catanzaro.

[2] § 16(b) of the FLSA (29 U. S. C. § 216(b)) provides, in relevant part:

> An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer in any Federal or State court of competent jurisdiction *by one or more employees for and on behalf of himself or themselves and other employees similarly situated. No employee shall become a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.* (Emphasis added.)

The Age Discrimination in Employment Act incorporates the procedures of FLSA § 16(b). See 29 U. S. C. § 626(b).

of what to do if they wished to exercise their statutory right to file their written consents to join. No one claims that this notice was anything other than a neutral, truthful description of the suit and of recipients' statutory right to join it.

After the notice was sent, some 60 persons, respondents here, filed consents to join the suit as co-plaintiffs. Petitioner then began efforts—of which this petition for certiorari is the latest—to have respondents dismissed with prejudice from the lawsuit on the ground that the district court had erred in allowing the notice to be sent to them.

These efforts began with a motion to dismiss respondents. When the district court denied this motion, petitioner filed a petition for writ of mandamus and a direct appeal. The Court of Appeals denied the petition for writ of mandamus on May 27, 1982. However, on August 16, 1982, before it had disposed of petitioner's direct appeal, the Court of Appeals decided *Woods* v. *New York Life Insurance Co.*, 686 F. 2d 578 (7th Cir. 1982). In *Woods*, the Court of Appeals held that nothing in the ADEA prohibits the named plaintiffs in a representative suit from notifying class members of the existence of the suit. The Court of Appeals also held that the district court had the power to supervise the contents of such a notice and that the notice should not be sent under the signature of the Clerk of the Court or other judicial officer.

On September 22, 1982, the Court of Appeals took jurisdiction over petitioner's appeal under the "collateral order doctrine," and disposed of it consistently with its holding in *Woods*. The unpublished order (Respondents' Appendix 4a-6a) affirmed the district court insofar as it authorized notice to be sent to class members, but reversed the district court insofar as the notice had gone out under the clerk of the court's signature rather than the named plaintiffs'. It remanded the case to the district court to fashion appropriate relief.

On remand, the district court took steps to purge any effects that might have been caused by having the clerk's signature on the notice. On September 30, 1982, it ordered

plaintiffs to send, over their signatures, a new notice and consent form to class members (Respondents' Appendix 6a-10a). The notices were accompanied by a letter from the plaintiffs (Respondents' Appendix 10a-11a) which explained that the previous notice had not been intended to express any view on the merits of the suit or to solicit anyone to join. All recipients who had joined the suit were required to file a reaffirmation form (Respondents' Appendix 10a) if they wished to continue their participation, and were expressly advised of their right to withdraw.

After receiving this notice and letter, all the original consenting plaintiffs expressly reaffirmed their desire to join the suit, as did thirteen additional persons. On December 21, 1982, after the process of renotification and refiling was completed, petitioner filed this petition for certiorari.

CERTIORARI SHOULD NOT BE GRANTED

To reverse the Court of Appeals, this Court would have to deliver two extraordinary holdings:

(1) that the ADEA affirmatively forbids the named plaintiffs from sending class members a neutral, truthful notice about the existence of the suit and their statutory right to join it; and

(2) that class members who receive such a notice must be punished by being forbidden to exercise their statutory right to join the suit.

There is nothing to be said for granting certiorari on either of these unconstitutional propositions.

A.

Neither the ADEA Nor the Constitution Supports a Rule Forbidding Named Plaintiffs From Sending Class Members a Truthful, Nonsolicitory Notice About the Existence of a Class Suit

The Court of Appeals, following its earlier decision in *Woods* v. *New York Life Insurance Co.*, 686 F. 2d 578 (7th Cir. 1982), held that nothing in the ADEA prevents the named

plaintiffs from sending a truthful notice to class members about the existence of a representative suit. Under *Woods*, the notice is to be signed by the plaintiffs, not by any judicial officer, and the district court may place appropriate restrictions on the notice to avoid misleading recipients. On remand from the Court of Appeals' decision, respondents were sent a new notice by the named plaintiffs in precise conformity with the *Woods* procedure. It is this *second* notice, sent by the named plaintiffs and not the court, whose validity is at issue on this petition.[3]

Petitioner asserts that *Woods* is wrong, and that the ADEA flatly forbids the named plaintiffs from sending a neutral, truthful, nonsolicitory notice about the existence of the lawsuit. This position is without merit. The ADEA contains no such restraint. If it did, it would be unconstitutional.

1. *Nothing in the ADEA Forbids Plaintiffs to Notify Class Members.* The ADEA contains no provision mentioning notice, much less a prohibition against named plaintiffs communicating with class members about the existence of a suit brought on their behalf. And there is no reference in the legislative history of the ADEA to the question of notice, much less an indication of Congressional intent to forbid plaintiffs to communicate with

[3] This fact—that it is the second, not the first, notice that is at issue—requires emphasis, because the petition for certiorari never mentions the second notice. Moreover, the petition never mentions (1) that the Court of Appeals *reversed* the district court's authorization of a notice signed by the clerk; (2) that it remanded the case for appropriate relief; (3) that the district court on remand conducted the consent procedure all over again; (4) that this time, a notice signed by the named plaintiffs was sent; and (5) that all the recipients opted in again after receiving the second notice. By suppressing these facts, the petition leaves the impression that the issue is the validity of the *original* notice. In fact, the Court of Appeals found that notice inappropriate, and the consent process was reconducted using a second notice that complied with the Court of Appeal's decision. The issue on this petition, therefore, is whether this *second* notice procedure complies with the ADEA.

class members about the suit. As Judge Posner wrote for the Court of Appeals in *Woods*, it would be anomalous for the ADEA to forbid such notice. The ADEA expressly "authorizes a representative action, and this authorization surely must carry with it a right in the representative plaintiff to notify the people he would like to represent that he brought a suit." *Woods*, 686 F. 2d at 580. Congress could not have intended to authorize representative actions but to keep class members in the dark about them.

To infer such Congressional intent to keep class members in the dark, petitioner cites the Congressional decision to avoid Rule 23 "opt-out" class actions under the ADEA. This proves nothing. That class members must affirmatively opt into an ADEA suit in no way implies that they cannot be notified of the suit. Instead, it implies the reverse. Since class members must act affirmatively to assert their rights, it is important that they get notice so that they may decide whether to act.

2. *Petitioner's Position Would Be Unconstitutional.* If the ADEA did forbid named plaintiffs from sending class members a truthful, nonsolicitory notice of the existence of their suit, such a prohibition would be a prior restraint on speech in violation of the First Amendment. Such prior restraints are presumptively unconstitutional, and only extraordinary governmental interests can justify them. *Southeastern Promotions* v. *Conrad*, 420 U. S. 546, 558-559 (1975). In the present case, there is no governmental justification, compelling or otherwise, for such a restraint, because everyone admits that the notice in question here was a neutral and truthful description of this lawsuit. Nor can petitioner raise the spectre of abuse in other cases. The Court of Appeals has expressly affirmed the right of the district court to supervise the contents of the plaintiffs' notice, to assure that class members are not misled.

3. *After Gulf Oil* v. *Bernard, the Kinney Decision Is Obsolete.* Petitioner seeks certiorari mainly on the fact that one early circuit court decision held that plaintiffs in a Fair Labor Standards Act class action could not send out a notice to class

members. *Kinney Shoe Corp.* v. *Vorhees,* 564 F.2d 859 (9th Cir. 1977). Since other circuits and almost all recent district court decisions have declined to follow *Kinney,* petitioner claims there is a "conflict" that demands this Court's attention. *Kinney's* rationale, however, was buried by this Court in *Gulf Oil* v. *Bernard,* 452 U.S. 89 (1981).

Kinney did *not* hold that the FLSA affirmatively *forbids* notice. Instead, it took the position that a named plaintiff could not communicate with class members about the suit unless some specific statute or rule affirmatively authorized him to do so. 564 F. 2d at 863-864. This position—that a representative plaintiff needs a specific authorization to speak about a class lawsuit to class members—was thoroughly discredited by *Gulf Oil* v. *Bernard,* which made it clear that such analysis gets matters backwards. Under *Gulf Oil,* which was decided under the shadow of the First Amendment, parties are presumptively free to communicate with others about a lawsuit unless defendant carries its burden of proving a specific, identifiable danger to the administration of justice that would result from that communication. 101 S.Ct. at 2200-2201.

Thus, after *Gulf Oil,* plaintiffs do not need, as *Kinney* had held, specific statutory authorization to speak to class members; instead, defendants need a specific authorization to *stop* them from speaking. Not even *Kinney* suggests that the FLSA (or the ADEA) contains a prohibition against named plaintiffs' notifying class members. And there is no possible abuse created by a neutral, truthful statement to class members about a lawsuit.

Not surprisingly, no other circuit has followed the early decision in *Kinney,* and after *Gulf Oil* there is scarcely a district

court to be found that follows it either.[4] There is no need to grant certiorari to reverse an isolated case whose rationale is now dead and buried.

4. *This Is the Wrong Case to Consider the Notice Issue.* Even if the notice issue were worth considering after *Gulf Oil*, this is not the case to consider it, because resolving the validity of the notice can have no practical effect on this lawsuit. The issue in this case is not whether notice should or should not go out, because the notice approved by the Court of Appeals has already been sent. Instead, the only issue is what to do with class members who opted in after the notice was sent. And, as shown in the next section, even if the notice was improper, the opt-ins cannot be dismissed from the suit. So the validity of the notice in this suit has become an academic exercise. Such exercises are never appropriate for certiorari.[5]

B.

Even if the Court of Appeals Had Erred in Allowing Notice to be Sent, Respondents Cannot be Forbidden to Exercise Their Right to Join the Suit

The relief petitioner seeks is to throw sixty innocent people out of this suit who have stated in writing—twice—that they want to exercise their statutory right to join it. Even if the Court

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[4] *Braunstein* v. *Eastern Photographic Laboratories*, 600 F. 2d 335 (2d Cir. 1978); *Monroe* v. *United Airlines, Inc.*, 90 F. R. D. 638 (N. D. Ill. 1981); *Riojas* v. *Seal Produce, Inc.*, 82 F. R. D. 613 (S. D. Tex. 1979); *Geller* v. *Markham*, 19 FEP Cases 1619 (D. Conn. 1979); *Lantz* v. *B-1202 Corp.*, 429 F. Supp. 421 (E. D. Mich. 1977); *Frank* v. *Capital Cities Communications*, 88 F. R. D. 674 (S. D. N. Y. 1981); *Cantu* v. *Owatonna Canning Co.*, unreported, No. 3-76-374 (D. Minn. 1978); *Johnson* v. *American Airlines*, 531 F. Supp. 957 (N. D. Tex. 1982).

[5] Moreover, the Court of Appeals' decision is an unpublished order that cannot even be cited within the Seventh Circuit as precedent. See Rule 35(d) of the Rules of the Seventh Circuit. The decision has no impact beyond this case—another reason for denying certiorari. Supreme Court Rule 17.

of Appeals had erred in holding that the named plaintiffs could send their notice to class members, this relief would be out of the question. No court has hinted that such a position has merit.

There is no qualification on the statutory right given by 29 U. S. C. § 216(b) to consent to join an ADEA class action. Nothing in the statute allows this right to be wiped out by a court because of the manner in which such persons learned about the suit. Nor has any case purported thus to lock the courthouse door to persons for whom Congress has opened it. To the contrary, the principal case on which petitioner relies in seeking certiorari, *Partlow* v. *Jewish Orphan's Home*, 645 F. 2d 757 (9th Cir. 1981), held that such relief would be unconstitutional.

Partlow was a case brought under the Fair Labor Standards Act. The attorney for the plaintiffs personally solicited opt-ins without court approval. In that context, the trial court held that these opt-ins were improperly secured, but it directed that a notice be sent to all persons who had filed consents, telling them they could refile. The defendants appealed from this order permitting a second notice. On appeal, the Ninth Circuit held that the sending of notice to the class, telling the opt-ins that they could refile consents, was not only permissible but *required* by due process considerations. 645 F. 2d at 759. The court stated flatly: "The consenting plaintiffs cannot be excluded from this lawsuit." 645 F. 2d at 760.

Partlow is thus the worst possible authority for petitioners. It holds that even if the consenting opt-ins joined the suit as a result of an improperly issued notice, they *cannot be dismissed from the suit.* And it approves exactly the procedure used here on remand from the Court of Appeals decision: renotification of the class and a new opportunity to opt in. No other holding was conceivable. To dismiss consenting class members would rewrite the statute, which says unconditionally that they may join, and it would violate due process. The parties who

consented have a statutory right to join. That statutory right is a property right protected by the due process clause. It cannot be taken away from them because of a court's error in how they were notified of the suit. *Logan* v. *Zimmerman Brush Company*, ____ U. S. ____, 102 S. Ct. 1148 (1982).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

CHARLES BARNHILL
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DAVIS, MINER, BARNHILL
& GALLAND
14 West Erie Street
Chicago, IL 60610
(312) 751-1170
Attorneys for Respondents
Raymond Allen, et al.

1. Original Notice and Consent Form Sent by District Court to Respondents

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND ALLEN, PETER BOSMAN, KARL C. KAISER, on behalf of themselves and on behalf of others similarly situated, *Plaintiffs,* v. MARSHALL FIELD & COMPANY, *Defendant.*	No. 81 C 5811

NOTICE OF PENDENCY OF AGE DISCRIMINATION LAWSUIT

TO: All persons who were employed by Marshall Field & Company at any time on or after January 1, 1977 and who are at present over 40 years of age.

RE: Age Discrimination In Employment Act (ADEA) lawsuit against Marshall Field & Company.

The purpose of this Notice is to advise you of an age discrimination lawsuit that his been filed against Marshall Field & Company and to advise you of the legal rights you have in connection with that suit.

1. *Description Of The Litigation.* Three former employees of Marshall Field & Company filed this lawsuit on October 10, 1981. The complaint alleges, in substance, that Marshall Field has engaged in a systematic course of discriminatory conduct against its older employees. This campaign is alleged to have begun in 1977 after Angelo Arena became president of Mar-

shall Field. Plaintiffs allege that this alleged campaign included termination or demotion of older employees for fictitious reasons and forced retirement of substantial numbers of other older employees by placing or threatening to place them in lower-paying or dead-end jobs. Marshall Field & Company has publicly denied all these charges and has denied that it discriminates against anyone on the basis of age.

2. *Your Right To Join This Suit As A Party Plaintiff.* If you believe that Marshall Field has discriminated against you on the basis of age in the manner plaintiffs assert in the complaint, you have the right to assert this claim against Marshall Field as a party plaintiff in the present lawsuit. To do that you must file with the Clerk of the Court a written Notice of Consent to be made a party plaintiff.

It is entirely your own decision whether or not to join this suit. You are not required to join in this case by filing your consent or to take any action unless you want to. It is completely voluntary.

3. *Your Options As to Legal Representation If You Join The Suit.* If you wish to join the suit as a party plaintiff, it is entirely your own decision as to whether you prefer to be represented by the present plaintiffs' attorneys or by an attorney of your own choosing. The attorneys for the present plaintiffs are:

Charles Barnhill, Jr.
George F. Galland, Jr.
Davis, Miner, Barnhill & Galland, Chtd.
14 West Erie Street
Chicago, Illinois 60610
(312) 751-1170

If you have any questions with respect to the case, you may contact them.

4. *How To File The Notice Of Consent If You Choose To Join This Suit.* Attached to this Notice is a form to be used if you wish to be a party plaintiff in this suit. That form must be

filled out, signed, and mailed to the Clerk of the Court *postmarked on or before* March 1, 1982. The form should be mailed to the following address:

Clerk of the United States
District Court
P.O. Box 10793
Chicago, Illinois 60610

Unless the Clerk receives a Notice of Consent form postmarked on or before March 1, 1982, you may not be allowed to join in this case.

5. *The Legal Effect Of Joining Or Not Joining In This Case.* If you do not file a consent form and join in this case, you will not receive any damages or other relief if the plaintiffs prevail here. Any such relief would be obtainable by you only if you began timely independent legal proceedings as prescribed by the Age Discrimination In Employment Act.

If, however, you decide to join the case by filing your consent, you will be bound by the judgment of the Court on all issues in the case.

6. *No Opinion Expressed As To The Merits Of The Case.* This notice is for the sole purpose of determining the identity of those persons who wish to be involved in this case. Although the Court has authorized the sending of this notice, there is no assurance at this time that the Court will find any plaintiff's contention meritorious or grant any relief.

7. *Protection Against Retaliation.* The Age Discrimination In Employment Act prohibits anyone from discriminating or retaliating against you if you choose to take part in this case.

/s/ H. Stuart Cunningham
H. Stuart Cunningham
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND ALLEN, PETER BOSMAN, KARL C. KAISER, on behalf of themselves and on behalf of others similarly situated, *Plaintiffs,*	No. 81 C 5811
vs.	
MARSHALL FIELD & COMPANY, *Defendant.*	Judge Hubert Will

NOTICE OF CONSENT TO JOIN AS A PARTY PLAINTIFF

I hereby give my consent to be a party plaintiff in this case.

Name _____

Address _____

_____

Telephone Number _____
(Area code) (Number)

Date of Birth _____

Signature _____

Date _____

2. Unpublished Order of the Court of Appeals Reversing and Remanding District Court's Approval of Original Notice

United States Court of Appeals, For the Seventh Circuit, Chicago, Illinois 60604.

September 22, 1982.

Before: Hon. *WILBUR F. PELL, JR., Circuit Judge, Hon. JESSE ESCHBACH, Circuit Judge,* Hon. *RICHARD A. POSNER, Circuit Judge.*

Raymond Allen, etc. et al., Plaintiffs-Appellees, vs. Marshall Field & Company, Defendant-Appellant. No. 82-1667.

Appeal from the United States District Court for the Northern District of Illinois Eastern Division.

No. 81 C 5811. Judge Hubert L. Will.

The Court has considered the following documents:

1. The "MOTION TO DISMISS APPEAL" filed on June 3, 1982, by counsel for the plaintiffs-appellees.
2. The "APPELLANT'S STATEMENT AND SUPPORTING MEMORANDUM RE JURISDICTION" filed on June 7, 1982.
3. The "APPELLEES' MEMORANDUM IN RESPONSE TO APPELLANTS' MEMORANDUM ON JURISDICTION" filed on June 8, 1982.

We DENY appellees' Motion to Dismiss and accept jurisdiction over this appeal pursuant to the collateral order doctrine in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949).

On January 21, 1982, the district court authorized notice of the pending action, and consent forms by which to join the action, to be sent to prospective plaintiffs. Defendant-appellant, Marshall Field & Company, has filed a notice of appeal from the order of the district court denying its motion to strike consents and to dismiss those persons filing consents from this action brought under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. Appellant is also appealing the denial of its motion for certification of the appeal and its motion for a stay of the proceedings before the district court.

Questions of certification and stay were addressed in the petition for writ of mandamus filed by appellant in Appeal No. 82-1708. The Petition for Writ of Mandamus was denied by this Court on May 27, 1982.

In a recently decided appeal this Court addressed the issue of whether a district judge has the power to notify prospective plaintiffs that an Age Discrimination in Employment action has been brought; and if so, how he should exercise that power. *Woods v. New York Life Insurance Co.*, No. 82-1827 (7th Cir. August 16, 1982). In *Woods* this Court affirmed the district court's power to authorize notice by the plaintiff or his counsel to members of the class; however, the court also held that suitable notice should not appear under a judicial letterhead and should not be signed by a judicial officer.

It appears that the notice and consent forms authorized by the district court to be sent in this case are not in compliance with this Court's holding in *Woods*. For this reason, although we *affirm* that part of the district court's order authorizing that notice be sent, we *reverse* the order insofar as it prescribes an incorrect form of notice, and *remand* to the district court to fashion appropriate relief.*

3. Second Notice and Reaffirmation/Withdrawal Form Sent by Plaintiffs to Respondents After the Court of Appeals Decision

Re: Raymond Allen, Peter Bosman, Carol E. Bunn, and Karl C. Kaiser vs. Marshall Field & Company No. 81 C 5811

*Compare *Partlow v. Jewish Orphans' Home of Southern Cal.*, 645 F.2d 757 (9th Cir. 1981), a suit brought under the Fair Labor Standards Act. In that case the district court order tolled the statute of limitations for filing suit under the FLSA for 45 days to allow potential plaintiffs, whose previously filed consents were ineffective, to file proper consent with the court.

NOTICE OF PENDENCY OF AGE DISCRIMINATION LAWSUIT

TO: All persons who were employed by Marshall Field & Company at any time on or after January 1, 1977 and who are at present over 40 years of age.

RE: Age Discrimination In Employment Act (ADEA) lawsuit against Marshall Field & Company.

The purpose of this Notice is to advise you of an age discrimination lawsuit that has been filed against Marshall Field & Company and to advise you of the legal rights you have in connection with that suit.

1. *Description Of The Litigation.* Four former employees of Marshall Field & Company filed this lawsuit on October 10, 1981. The complaint alleges, in substance, that Marshall Field has engaged in a systematic course of discriminatory conduct against its older employees. This campaign is alleged to have begun in 1977 after Angelo Arena became president of Marshall Field. Plaintiffs allege that this alleged campaign included termination or demotion of older employees for fictitious reasons and forced retirement of substantial numbers of other older employees by placing or threatening to place them in lower-paying or dead-end jobs. Marshall Field & Company has publicly denied all these charges and has denied that it discriminates against anyone on the basis of age.

2. *Your Right To Join This Suit As A Party Plaintiff.* If you believe that Marshall Field has discriminated against you on the basis of age in the manner plaintiffs assert in the complaint, you have the right to assert this claim against Marshall Field as a party plaintiff in the present lawsuit. To do that you must file with the Clerk of the Court a written Notice of Consent to be made a party plaintiff.

It is entirely your own decision whether or not to join this suit. You are not required to join in this case by filing your consent or to take any action unless you want to. It is completely voluntary.

3. *Your Options As To Legal Representation If You Join The Suit.* If you wish to join the suit as a party plaintiff, it is entirely your own decision as to whether you prefer to be represented by the present plaintiffs' attorneys or by an attorney of your own choosing. The attorneys for the present plaintiffs are:

Charles Barnhill, Jr.
George F. Galland, Jr.
Davis, Miner, Barnhill & Galland, P.C.
14 West Erie Street
Chicago, Illinois 60610
(312) 751-1170

If you have any questions with respect to the case, you may contact them.

4. *How To File The Notice Of Consent If You Choose To Join This Suit.* Attached to this Notice is a form to be used if you wish to be a party plaintiff in this suit. That form must be filled out, signed, and mailed to the address below, *postmarked on or before* October 20, 1982. The form should be mailed to the following address:

Mr. Charles Barnhill
P.O. Box 10793
Chicago, Illinois 60610

Unless we receive a Notice of Consent form postmarked on or before October 20, 1982, you may not be allowed to join in this case.

5. *The Legal Effect Of Joining Or Not Joining In This Case.* If you do not file a consent form and join in this case, you will not receive any damages or other relief if the plaintiffs prevail here. Any such relief would be obtainable by you only if you began timely independent legal proceedings as prescribed by the Age Discrimination In Employment Act.

If, however, you decide to join the case by filing your consent, you will be bound by the judgment of the Court on all issues in the case.

6. *No Opinion Expressed As To The Merits Of The Case.* This notice is for the sole purpose of determining the identity of those persons who wish to be involved in this case. Although the Court has authorized the sending of this notice, there is no assurance at this time that the Court will find any plaintiffs' contention meritorious or grant any relief.

7. *Protection Against Retaliation.* The Age Discrimination In Employment Act prohibits anyone from discriminating or retaliating against you if you choose to take part in this case.

/s/ Charles Barnhill
Charles Barnhill

/s/ George F. Galland, Jr.
George F. Galland, Jr.
Attorneys for the Plaintiffs

Re: Raymond Allen, Peter Bosman, Carol E. Bunn, and Karl C. Kaiser vs. Marshall Field & Company No. 81 C 5811

REAFFIRMATION OR WITHDRAWAL FORM

I, _____, hereby:
(Print Name)

Check one box only.

☐ Reaffirm my desire to be a plaintiff in this case.

☐ Withdraw my consent to be a plaintiff in this case.

Signature _____

Send to: Mr. Charles Barnhill
P. O. Box 10793
Chicago, Illinois 60610

4. Explanatory Letter from Plaintiffs' Counsel Which Accompanied the Second Notice

Re: *Allen et al v. Marshall Field & Co.*

Dear Plaintiff:

You joined this lawsuit upon receiving notification of its pendency in a notice signed by the Clerk of the Court. In a recent ruling the Seventh Circuit Court of Appeals expressed its concern that you might have believed that you were being invited by the Court or the Clerk to join this lawsuit. No such invitation was intended.

Neither the Clerk nor the Court have ever taken any position on the issue of whether or not you should participate in this suit. Nor was the notice you received meant to indicate that the Court or the Clerk believed that the lawsuit either has merit or lacks merit. The Court system is completely neutral on whether you should join this lawsuit.

If you were confused by the first notice and believed that you had received a judicial invitation to join this lawsuit or if you now wish to withdraw for any reason, please mark the box indicating the withdrawal of your consent to be a party. If, however, you desire to remain a party to the suit please mark the box reaffirming your desire to be a party. You should respond one way or the other by October 20, 1982. An updated notice of this action previously sent you is enclosed.

Sincerely,

/s/ Charles Barnhill
Charles Barnhill

CB:dm